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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON MURILLO,

Plaintiff,

vs.

P. FLOURNOY, et al.,

Defendants.

CASE NO. 11cv1687 BEN
(BGS)

**ORDER ADOPTING
REPORT AND
RECOMMENDATION TO:**

**(1) DENY PLAINTIFF'S
REQUEST TO TREAT THE
MOTION TO DISMISS AS A
MOTION FOR SUMMARY
JUDGMENT; AND**

**(2) GRANT DEFENDANTS'
MOTION TO DISMISS
PLAINTIFF'S FIRST
AMENDED COMPLAINT**

[ECF Nos. 34, 40, 50]

Plaintiff, a prisoner proceeding *pro se* and *in forma pauperis*, filed an amended civil rights complaint on November 29, 2011. (ECF No. 10.) Defendants moved to dismiss on various grounds. (ECF No. 34.) On January 30, 2013, Magistrate Judge Bernard G. Skomal issued a Report and Recommendation recommending that Defendants' Motion to Dismiss be granted. (ECF No. 50.) Plaintiff moved for an extension of time to file an Objection but the Court denied that request. (ECF Nos. 51, 52.) No objections were filed by the February 18, 2013 deadline. For the reasons

1 stated below, the Court adopts the well-reasoned Report and Recommendation of the
2 Magistrate Judge and grants Defendants' Motion to Dismiss.

3 A district judge "may accept, reject, or modify the recommended decision" of a
4 Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.
5 §636(b)(1). Moreover, the court shall make a de novo determination of those portions
6 of the report and recommendation to which objection is made. FED. R. CIV. P. 72.
7 "The statute makes it clear that the district judge must review the magistrate judge's
8 findings and recommendations de novo *if objection is made*, but not otherwise. . . .
9 Neither the Constitution nor the statute requires a district judge to review, de novo,
10 findings and recommendations that the parties themselves accept as correct." *U.S. v.*
11 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original).

12 In the Report and Recommendation, Magistrate Judge Skomal correctly
13 considered the Plaintiff's arguments and determined that Plaintiff failed to exhaust
14 administrative remedies with respect to certain claims, and failed to adequately plead
15 other claims. Moreover, Plaintiff's claims against Defendants in their official
16 capacities are barred by the Eleventh Amendment. Accordingly, this Court **ADOPTS**
17 in full the Report and Recommendation. Plaintiff's request for the Court to treat
18 Defendants' motion to dismiss as a motion for summary judgment is **DENIED**.
19 Defendants' motion to dismiss is **GRANTED**.

20
21 **IT IS SO ORDERED.**

22 DATED: February 27, 2013

23 
24 HON. ROGER T. BENITEZ
25 United States District Court Judge
26
27
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